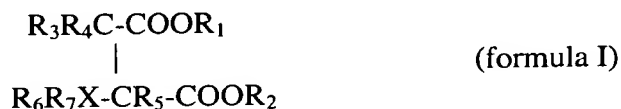


6. (Amended) An additive package for preparing a hydraulic fluid which additive package comprises:

- (a) from 0.001 to 5 %wt of magnesium salicylate,
- (b) from 0.01 to 8 %wt of zinc dithiophosphate; and,
- (c) from 0.001 to 5 %wt of a compound according to the following formula I



in which R₁ and R₂ are each hydrogen or alkyl or hydroxyalkyl of 1 to 30 carbon atoms; R₃, R₄ and R₅ are each hydrogen or alkyl or hydroxyalkyl of 1 to 4 carbon atoms; X is CH or N and R₆ and R₇ are each hydrogen, alkyl or alkenyl of 1 to 30 carbon atoms, or an acyl group derived from a saturated or unsaturated carboxylic acid of up to 30 carbon atoms wherein the weight ratio of magnesium salicylate to zinc dithiophosphate ranges from 1:5 to 1:100; and,

the weight ratio of magnesium salicylate to the compound of Formula I ranges from an amount greater than 1:0 to 1:50.

REMARKS

Claims 2 and 3 have been cancelled.

Claims 1 and 5 were rejected under 35 USC §102(b) as being anticipated by Denis et al US Patent 4,954,273 ('273). In view of the amendments to Claim 1, Applicants believe this rejection to be obviated and respectfully request that it be withdrawn.

Claims 2-4 and 6 have been rejected under 35 USC §103(a) as being unpatentable over the '273 reference. This rejection is respectfully traversed. The Examiner asserts that it would have been obvious to one skilled in the art to follow the teachings of the '273 reference and arrive at the claimed composition and relative amounts. However, the '273 reference is not directed toward hydraulic fluids and is not directed toward solving the problems indicated in the instant application. In particular, the '273 reference is directed toward water tolerance, pH stability and antiwear in crank case oils, whereas the instant invention is directed toward improving thermal stability and wear under low load in a hydraulic fluid. Therefore, the person skilled in the art at the time of the instant invention, would not have looked to the '273 reference for guidance on solving these problems in hydraulic fluids. In view of these arguments, Applicants respectfully request that the rejection be withdrawn.

Claims 1-6 have been rejected under 35 USC §103(a) as being unpatentable over Matthews et al, US 4,462,918 ('918) in view of EP 0 434 464 A1, ('464) and Karn, US 4,627,928 ('928). This rejection is respectfully traversed. For a reference to render a claim obvious, it must teach or suggest the elements of the claim. In the instant application, a specific selection has been made to use magnesium salicylate in the formulation as opposed to calcium salicylate due to the surprising result that the magnesium compound results in better wear performance than the calcium compound. There is no teaching or suggestion in the combined references to arrive at the claimed composition. The '918 reference does not teach the magnesium salicylate. The '464 reference mentions the addition of an alkaline earth metal alkylsalicylate, but indicates a preference for the calcium compound. The '928 reference is directed toward anti-oxidants rather than agents for purposes of thermal stability and anti-wear purposes. Therefore, this combination of references does not teach or suggest the elements of the claims. In view of these arguments, Applicants respectfully request that the rejection be withdrawn.

Claims 1 and 5 were rejected under 35 USC §102(e) as being anticipated by Fujitsu et al US Patent 6,114,288 ('288). In view of the amendments to Claim 1, Applicants believe this rejection to be obviated and respectfully request that it be withdrawn.

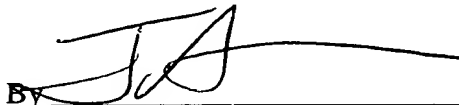
Claims 2-4 and 6 were rejection under 35 USC §103(a) as being unpatentable over the '288 reference in view of the '918 reference. Claims 2 and 3 have been cancelled. This rejection is respectfully traversed. The '288 reference is directed toward the improvement of wear resistance in moving valve parts in an internal combustion engine. The instant application is directed toward the improvement of thermal stability and wear under low load in a hydraulic fluid. The person skilled in the art at the time of the instant invention would not have looked to the '288 reference for guidance with respect to hydraulic fluids. Similarly, although the '918 reference is directed toward hydraulic fluids, it is not directed towards solving problems with thermal stability at low loads. Therefore, there is no motivation to combine these two references to arrive at the instant invention. In view of these arguments, Applicants respectfully request that the rejection be withdrawn.

Claim 4 was rejected under under 35 USC §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Claim 4 lacked antecedent basis for "Formula I". In view of the amended Claim 4, Applicants believe this rejection to be obviated and respectfully request that the rejection be withdrawn.

In view of the above amendments and remarks, Applicants respectfully request that the rejections be withdrawn. Applicants believe the instant application to be in condition for allowance and respectfully request that such action be taken.

Respectfully submitted,

ANDREW JOHN HOLMES and
CAMERON WILLIAM WATSON

By 

Attorney, Jennifer D. Adamson
Registration No. 47,379
(713) 241-3901

P. O. Box 2463
Houston, Texas 77252-2463